

ROBERTA STEELE, SBN 188198 (CA)  
MARCIA L. MITCHELL, SBN 18122 (WA)  
DEBRA A. SMITH, SBN 147863 (CA)  
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
San Francisco District Office  
450 Golden Gate Ave., 5<sup>th</sup> Floor West  
P.O. Box 36025  
San Francisco, CA 94102  
Telephone No. (415) 522-3034  
Fax No. (415) 522-3425  
[Debra.Smith@eeoc.gov](mailto:Debra.Smith@eeoc.gov)

DAMIEN A. LEE, SBN 430135 (DC)  
Seattle Field Office  
909 First Ave., Ste. 400  
Seattle, WA 98104  
Telephone No. (206) 220-6915  
Fax No. (206) 220-6911  
[damien.lee@eeoc.gov](mailto:damien.lee@eeoc.gov)

*Attorneys for Plaintiff EEOC*

ELIZABETH A. FALCONE, CA Bar No. 219084  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
The KOIN Center  
222 SW Columbia Street, Suite 1500  
Portland, OR 97201  
Telephone: 503.552.2140  
Facsimile: 8503.224.4518  
[elizabeth.falcone@ogletree.com](mailto:elizabeth.falcone@ogletree.com)

*Attorneys for Defendant TARGET CORPORATION*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

# U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Case No.: 3:18-cv-05802-EMC

**Plaintiff.**

## **[PROPOSED] CONSENT DECREE**

VS

## TARGET CORPORATION

**Defendant.**

## **INTRODUCTION**

On September 21, 2018, Plaintiff U.S. Equal Employment Opportunity Commission (EEOC) filed this action pursuant to the Americans with Disabilities Act of 1990 as amended (ADA) and Title I of the Civil Rights Act of 1991. (ECF No. 1) Plaintiff alleged that Defendant Target Corporation (Target) discriminated against John Hayes because of his disability (deafness) by failing to interview and hire him for a Guest Services Team Member (GSTM) position at the Antioch store in October 2014. Target filed an Answer to the EEOC's Complaint on December 21, 2018, denying EEOC's claims in their entirety. (ECF No. 13)

The EEOC and Target (hereinafter, the Parties) want to conclude fully and finally all claims arising out of the above-referenced action, seek to avoid the additional expense, delay, and uncertainty that would result from further litigation of this lawsuit, and agree to the entry of this Consent Decree.

The Court has reviewed the terms of this Consent Decree in light of the pleadings, the record and the applicable law, and now approves this Consent Decree in its entirety.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS  
FOLLOWS:**

## I. GENERAL PROVISIONS

**A.** This Court has jurisdiction over the subject matter and the Parties to this action, *EEOC v. Target Corporation*, Case No. 3:18-cv-05802-EMC (N.D. Cal.). This Court will retain jurisdiction over this Decree for all purposes until expiration of Target's obligations as set forth herein.

**B.** This Consent Decree comprises the full and final resolution of all claims pled in the Complaint and constitutes a complete resolution of all claims of discrimination based on the allegations in EEOC Charge No. 555-2015-000104 (John Hayes v. Target Corporation) (the Charge).

C. This Consent Decree does not affect the EEOC's right to process any charges, other than the Charge filed by Mr. Hayes, that may be pending before the agency that are not covered by this Decree or future charges that may be filed against Target, its subsidiaries or related entities, and

1 does not affect the EEOC's right to seek relief and/or commence civil actions on any such charges.

2       **D.**      No waiver, modification, or amendment of any provision of this Consent Decree shall  
3 be effective unless made in writing and approved by all Parties to this Decree, and any substantive  
4 change, modification or amendment of any provision of this Consent Decree shall also require  
5 approval by the Court.

6       **E.**      Defendant shall provide prior written notice to any potential purchaser of Target  
7 Corporation's business, or a purchaser of all or a portion of Defendant's assets, and to any other  
8 potential successor, about this lawsuit, the allegations raised in the complaint, and the existence and  
9 contents of this Consent Decree during the term of this Consent Decree.

10       **F.**      Nothing in this Consent Decree shall be construed as an admission of liability by  
11 Target. Target maintains that it fully complies with the ADA, including requirements to reasonably  
12 accommodate deaf and hard of hearing applicants and employees.

13       **G.**      This Consent Decree is final and binding upon Target, its parents, subsidiaries,  
14 officers, directors, management, human resources personnel, successors and assigns, and shall  
15 become effective upon its entry by the Court.

16       **H.**      Each Party shall bear its own costs and attorney's fees.

17       **II. GENERAL INJUNCTIVE PROVISIONS AGAINST DISABILITY DISCRIMINATION  
18 AND RETALIATION**

19       **A.**      Target and its officers, employees, and successors and assigns, are enjoined from  
20 unlawfully discriminating against applicants and/or employees based on disability, including failing  
21 or refusing to hire a qualified applicant for employment based on disability.

22       **III. SPECIFIC INJUNCTIVE RELIEF**

23       **A. POLICIES**

24       Throughout the duration of this Decree, Target shall maintain the policies and procedures  
25 regarding applicants' need or request for a reasonable accommodation, described below in  
26 Sections III.A.1-5, at all of its stores nationwide with the exception of Section III.A.3.a.4, which  
27 applies to Store 1819 only. The goal of the policies and procedures is to provide for full compliance  
28 with the ADA and to allow a disabled applicant and/or employee an equal opportunity to compete

1 for open positions. Target shall submit its applicable policies to the EEOC within thirty (30) days of  
 2 entry of this Decree.

3           **1. ADA Compliance**

4       Throughout the duration of this Decree, Target's policies and procedures shall maintain an  
 5 explicit prohibition against discrimination based on disability and explain to applicants and  
 6 employees their rights and responsibilities under the ADA. Target shall also maintain anti-  
 7 discrimination policies that include provisions which prohibit retaliation against an individual for  
 8 engaging in protected EEO activity.

9           **2. Notice to Applicants**

10      Throughout the duration of the Decree, Target shall maintain a mechanism to provide job  
 11 applicants with means to request reasonable accommodations during the hiring process. Target's  
 12 website shall maintain language informing applicants seeking assistance or a reasonable  
 13 accommodation during the application process that they can request an accommodation in person at  
 14 a store or distribution center or may contact Guest Relations by calling a telephone number provided  
 15 on Target's website. At a minimum, Target shall include the following language on its job postings  
 16 and job applications:

17           **(a) Job Posting:** "Target will provide reasonable accommodations (such  
 18 as a qualified sign language interpreter or other personal assistance) with the application process  
 19 upon your request as required to comply with applicable laws. If you have a disability and require  
 20 assistance in this application process, please visit your nearest Target store or Distribution Center or  
 21 reach out to Guest Services at 1-800-440-0680 for additional information."

22           **(b) Application:** "Target is committed to accommodating applicants who  
 23 need assistance in completing a job application. If you need an accommodation, please contact  
 24 Target at 1-800-440-0680 and Target will arrange for assistance in completing the application.  
 25 Absent a need for accommodation or translation services, however, applicants should complete their  
 26 application without outside assistance. By submitting this application, you verify that you are aware  
 27 of this policy and that unless an accommodation or translation services were required, you are the  
 28 individual who is applying for the job and you have personally completed the application."

1                   **3. Reasonable Accommodation Policies and Procedures**

2                   **(a)**     Throughout the duration of this Decree, Target shall maintain  
 3 procedures and policies that: (1) provide step by step guidance regarding the process to address a  
 4 request for reasonable accommodation including the interactive process, review of the request, and  
 5 an individualized assessment of the request by a person or persons with knowledge and appropriate  
 6 training, as described below in Section III.B in the requirements of the ADA; (2) advise all personnel  
 7 involved in determining reasonable accommodations that they should not make assumptions  
 8 regarding whether an accommodation is needed or the type of accommodation that would be  
 9 effective; (3) allow applicants to appeal any denial of an accommodation request or rejection of hire  
 10 by calling Target at 1-800-440-0680; (4) include a requirement for retaining all documents submitted  
 11 by an employee or applicant concerning a request for reasonable accommodation at Store 1819 as  
 12 well as any documents or opinions that Target relied on if it denies the employee's or applicant's  
 13 request for a reasonable accommodation at Store 1819; (5) include information advising employees  
 14 of their obligation to comply with the aforementioned policies and procedures; and (6) inform  
 15 employees that any violation of the policy will result in appropriate discipline up to and including  
 16 termination.

17                  **(b)**     During its recruitment and hiring of deaf and hard of hearing (HOH)  
 18 applicants who seek or require accommodation, Target shall engage in the interactive process to  
 19 determine whether a reasonable accommodation will be effective for the applicant.

20                  **(c)**     Once Target has hired a deaf or HOH individual, it shall engage in the  
 21 interactive process as necessary to ensure that the employee is able to enjoy all the benefits of  
 22 employment, including access to reasonable accommodations that allow participation in important  
 23 personnel meetings (examples include performance evaluations and disciplinary actions).

24                  **(d)**     Throughout the duration of this Decree, Target shall maintain a policy  
 25 of granting reasonable accommodations requested by deaf and hard of hearing employees, including  
 26 reasonable accommodations necessary to allow those employees to communicate regarding changes  
 27 in work schedules and other terms or conditions of employment.

28                  **(e)**     Within one hundred (100) days of entry of this Decree, Target shall

consult with one or more non-profit organizations that specialize in providing services to deaf and HOH individuals to obtain information and resources regarding the scope of potential accommodations that Target should consider providing to deaf and HOH employees.

(f) Within one hundred ten (110) days of entry of this Decree, Target shall confirm by declaration from its in-house or outside counsel that it has consulted with the non-profit(s) as required by the previous Paragraph, III.A.3(e), obtained the requisite information and resources regarding the scope of potential accommodations for deaf and HOH employees, and determined the method by which it will inform deaf and HOH employees who request accommodation of the availability of such accommodations.

#### **4. Policy Dissemination**

Target shall maintain a policy regarding the ADA on its intranet website accessible to current employees and disseminate the policy to new employees during its onboarding or orientation process within ten (10) days of the employee beginning work, absent extenuating circumstances. All new employees who receive the policy shall be requested to acknowledge its receipt. Target shall maintain records reflecting its on-boarding of new employees, which include information about receipt of the policy referenced in this Paragraph (which is referred to in this document as the “Accommodating Disabilities Policy”).

## 5. Future Policy Modifications

In the event that Target materially modifies its Accommodating Disabilities Policy during the duration of this Decree, Target shall submit to the EEOC for its review and comment the proposed modifications no later than twenty-one (21) days before adoption. The EEOC will notify Target within fourteen (14) days of receipt of the proposed modifications if it has any concerns about the proposed modifications. For purposes of this Paragraph, “material modifications” shall refer to any modifications to the substantive provisions referenced in Paragraphs III.A.1 through III.A.5.

## **B. TRAINING**

Throughout the duration of this Decree, Target shall provide the training described below in Sections III.B.1-5 at Store No. 1819.

1           **1. Managers , Supervisors and Hourly HR Employees**

2           (a) Within two hundred (200) days of entry of this Consent Decree, Target  
 3 shall provide ADA training to all Managers, Supervisors, and Hourly Employees in its Human  
 4 Resources function at Store 1819, consisting of interactive, web-based ADA training to ensure that  
 5 they understand the ADA, their obligations under the ADA, and the rights it provides to employees.  
 6 Target shall pay all costs associated with training required by this Decree.

7           (b) Newly hired managers, supervisors, and hourly employees in Target's  
 8 Human Resources function at Store 1819, and those promoted into these positions after the Consent  
 9 Decree becomes effective, shall receive the ADA training within ninety (90) days of hire or  
 10 promotion or 200 days of the effective date of this Consent Decree, whichever comes last, absent  
 11 extenuating circumstances.

12           **2. Annual Training Requirement**

13 Target's ADA training for its managers, supervisors, and Hourly Employees in its Human  
 14 Resources function at Store 1819 shall be required annually throughout the duration of the Decree.

15           **3. Training Subject Matter**

16 Throughout the duration of this Decree, Target shall maintain a training program that, at a  
 17 minimum, covers the following: (a) instruction on Target's policies prohibiting discrimination based  
 18 on disability and concerning reasonable accommodations, which must include sample scenarios  
 19 specifically related to the hiring and accommodation of deaf applicants and employees; (b) examples  
 20 of appropriate questions to be used during prescreens and interviews, including consideration of  
 21 accommodation for applicants with known disabilities, the availability of reasonable  
 22 accommodations, the means for requesting an accommodation, and instruction as to what to do when  
 23 an applicant makes such a request for reasonable accommodation or when a hiring manager believes  
 24 a reasonable accommodation might be warranted; (c) instruction that each participant is responsible  
 25 for complying with Target's policies on the ADA and reasonable accommodation; and (d) informs  
 26 each hiring official or participant that he or she is expected to comply with the ADA in executing  
 27 their job duties.

28           ///

1                   **4. Training Attendance**

2                   Target shall maintain records of all employees who receive training required by this Decree.  
 3 Target shall submit a copy of those training records to the EEOC as required by Section III.D.4 of  
 4 this Decree.

5                   **5. Training Materials**

6                   Throughout the duration of the Decree, Target shall provide the EEOC with copies of the  
 7 training materials utilized in training required by this Decree annually on the anniversary of entry of  
 8 the Decree (or the first business day following that date).

9                   **C. POSTING**

10                  Target shall post the Notice of the Consent Decree, attached as Exhibit A, within thirty (30)  
 11 days of entry of this Consent Decree, and it shall remain posted on company bulletin boards located  
 12 in employee areas at Store No. 1819 in Antioch, California for the duration of the Decree. Should  
 13 the Notice become defaced, marred or otherwise made unreadable, Target will ensure that new  
 14 legible copies of the Notice are re-posted. Within thirty (30) days of entry of the Decree, Target  
 15 shall send the EEOC a certification that it has posted the Notice in compliance with this paragraph.

16                  **D. REPORTING**

17                  **1.**               Annually, on the anniversary of the entry of this Consent Decree, Target shall  
 18 make the following reports regarding Store No. 1819 in Antioch, CA:

19                  (b)           For each year after the entry of the Decree, Target shall provide the  
 20 following information for any individual who (a) made a request for reasonable accommodation of a  
 21 hearing-related disability during the hiring process, (b) was rejected from hire after requesting a  
 22 reasonable accommodation for a hearing-related disability, or (c) complained that they were rejected  
 23 from hire due to discrimination based on a hearing-related disability:

24                  (1)           A unique numerical identifier for each individual who meets  
 25 the description in the preceding paragraph;

26                  (2)           A report of the nature of the request for accommodation, an  
 27 explanation of any response/action Target took, and a summary of any appeal through  
 28 Target's 1-800 number;

(3) Name(s) and title of each individual(s) who received and/or addressed a request for accommodation during the hiring process or was involved in processing of an appeal submitted to Target's 1-800 number concerning the denial of a reasonable accommodation or rejection from hire, including an explanation of the role each individual played during the process; and

(4) In response to its review and assessment of the information provided in this Section, the EEOC may subsequently request in writing the identity and most recent address, phone number and email address of individual(s) for whom Target used a numerical identifier. Upon the EEOC's request, Target shall provide the contact information in its possession to the EEOC within fifteen (15) business days.

2. For each reporting period, Target shall verify and confirm by declaration from its in-house or outside counsel that Target has met the posting requirements described in Section III.C.

3. For each reporting period, Target shall verify and confirm by declaration from its in-house or outside counsel that Target has met the training requirements and provided the information about its reasonable accommodation policies, practices and procedures, as provided in Section III.B.

4. For each reporting period, Target shall submit the roster of all employees trained pursuant to the requirements of the Decree, as described in Section III.B.4.

5. Target shall submit all foregoing reports and declarations by email to: [EOC-SFDO\\_COMPLIANCE@eeoc.gov](mailto:EOC-SFDO_COMPLIANCE@eeoc.gov).

## **E. MONETARY RELIEF**

**1.** In settlement of the EEOC's claims in this lawsuit, Target shall pay the total amount of \$45,000.00 (forty-five thousand dollars and no cents) (Settlement Sum).

2. The proceeds from the Settlement Sum shall be characterized as follows:  
\$9,000.00 (nine thousand dollars and no cents) shall be characterized as lost wages, for which Target shall make the appropriate withholdings and issue a check and timely IRS Form W-2 to Hayes. Hayes shall provide an IRS Form W-4 to Target within five (5) business days of entry of this Decree

1 to allow Target to make the appropriate withholdings.

2       3. Target shall issue a separate check in the amount of \$36,000.00 (thirty-six  
 3 thousand dollars and no cents) from the Settlement Sum to compensate Hayes for compensatory  
 4 damages. Target shall make this payment and provide the IRS Form 1099 directly to John Hayes by  
 5 certified mail, return receipt requested, to an address specified by the EEOC.

6       4. The EEOC will provide Hayes' address to counsel for Target within five (5)  
 7 business days of the entry of the Consent Decree.

8       5. Target shall make all Settlement Sum payments within thirty (30) days of the  
 9 entry of this Consent Decree.

10      6. Target shall send a copy of the checks sent to Hayes to [EEOC-SFDO\\_COMPLIANCE@eeoc.gov](mailto:SFDO_COMPLIANCE@eeoc.gov) within three (3) days after they are mailed to Hayes. Target will  
 11 issue the IRS Forms W-2 and 1099 to Hayes within the time period required by the IRS.

12      7. Target will not condition the receipt of individual relief on Hayes's agreement  
 13 to (a) maintain as confidential the terms of this decree, (b) waive his statutory right to file a charge  
 14 with any federal or state anti-discrimination agency, (c) release his rights under any law other than  
 15 the ADA, or (d) waive his right to apply for a position with the Target in the future.

#### 17 **IV. DURATION OF CONSENT DECREE AND CONTINUED JURISDICTION**

18      A. This Court shall retain jurisdiction over this action during the duration of this Consent  
 19 Decree for the purpose of entering all orders, judgments and decrees that may be necessary to  
 20 implement the relief provided herein. The procedures described below are not intended to diminish  
 21 this Court's inherent power to enforce any provision of this Decree.

22      B. This Consent Decree shall expire three (3) years after its entry by the Court, provided  
 23 that Target has complied with the terms of this Decree. Target will be deemed to have complied  
 24 substantially if the Court has not made any findings or orders during the term of the Consent Decree  
 25 that Target has failed to comply with any term of this Decree.

26      C. If the EEOC has reason to believe that Target has failed to comply with any provision  
 27 of this Decree, the EEOC may petition or may bring an action before this Court to enforce the  
 28 Decree. Prior to initiating such petition or action, the EEOC will notify counsel for Target, in

writing, of the nature of the alleged breach of the Decree. Target shall have sixty (60) days from receipt of the EEOC's written notice of the alleged breach to resolve or cure the alleged material breach. The sixty (60) day period following written notice shall be used by the parties in good faith to resolve the issue. If sixty (60) days have passed with no resolution or agreement to extend the time further, the EEOC may petition or bring an action before this Court for compliance with this Decree. If the EEOC petitions the Court and the Court finds Target to be in substantial violation of the terms of the Decree, the Court may extend the duration of the Consent Decree.

## **V. MODIFICATION AND SEVERABILITY OF THE DECREE**

The Parties shall use their best efforts to support and defend this Decree from any legal challenge whether by appeal, collateral attack, or objection. Whenever possible, each provision of this Decree will be interpreted in such a manner as to be valid and enforceable; provided, however, that in the event that, subsequent to the Court's entry of the Decree, any provision of this Decree should be determined to be or rendered unenforceable on collateral review, all other provisions and terms of this Decree, and the application thereof to all persons and circumstances subject thereto, will remain unaffected to the extent permitted by law.

Dated: March 23, 2020

U.S. EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Sharon Fast Gustafson  
General Counsel

James Lee  
Deputy General Counsel

Gwendolyn Young Reams  
Associate General Counsel

By: /s/ Roberta Steele  
ROBERTA STEELE  
Regional Attorney  
San Francisco District Office  
*For Plaintiff EEOC*

By: /s/ Marcia Mitchell  
MARCIA MITCHELL  
Supervisory Trial Attorney  
San Francisco District Office

*For Plaintiff EEOC*

By: /s/ Debra Smith  
DEBRA SMITH  
Senior Trial Attorney  
San Francisco District Office  
*For Plaintiff EEOC*

Dated: March 23, 2020

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By: /s/ Elizabeth A. Falcone  
ELIZABETH A. FALCONE  
*Attorneys for Defendant TARGET  
CORPORATION*

**LOCAL RULE 5-1(i)(3) ATTESTATION**

I, Elizabeth A., Falcone, am the ECF User whose identification and password are being used to file this [PROPOSED] CONSENT DECREE. In compliance with Civil Local Rule 5-1(i), I hereby attest that Debra Smith and Plaintiff's counsel have concurred in this filing.

DATE: March 23, 2020

By: /s/ Elizabeth A. Falcone  
Elizabeth A. Falcone  
OGLETREE, DEAKINS, NASH, SMOAK  
& STEWART  
Counsel for Defendant Target Corporation

## IT IS SO ORDERED.

DATED: March 27, 2020

HON. EDWARD M. CHEN  
United States District Court Judge

42277131.1

**EXHIBIT A**  
**NOTICE TO ALL EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the federal court in *EEOC v. Target Corporation*, Case No.: 3:18-cv-05802-EMC, resolving a lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC) against Target Corporation (Target or Defendant). The EEOC is the federal agency responsible for enforcing laws against discrimination in employment.

Title I of the Americans with Disabilities Act of 1990, as amended (ADA), covers individuals who have a physical or mental impairment that substantially limits one or more major life activities, who have a record of such impairment, or who are regarded as having such impairment. The ADA prohibits discrimination against individuals with disabilities in all employment practices, including job application procedures, post-offer and other employment-related medical evaluations, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. The ADA also requires employers to provide reasonable accommodations that enable people with disabilities to perform their jobs. The ADA also requires employees to maintain the confidentiality of its employee's medical records and to keep such medical records separate and apart from the employee's other personnel documents. The ADA further prohibits retaliation against employees or applicants who avail themselves of the rights provided by the ADA by engaging in protected activities such as filing a charge of discrimination and/or testifying or participating in an investigation conducted by the EEOC.

To resolve this case, Target and the EEOC have entered into a Consent Decree through which Defendant shall maintain its compliance with the ADA in all respects, and specifically by not discriminating against any applicant or employee due to his or her disability and by documenting and reporting the requests for hearing-related accommodation that it receives during the hiring process at Store No. 1819 in Antioch, California and the steps it takes to provide or deny the accommodation on an annual basis throughout the duration of the Decree. Defendant also shall maintain its current anti-retaliation provisions and will not take any adverse employment actions against applicants or employees for requesting a reasonable accommodation. As part of the terms of the Consent Decree, Defendant shall also provide training to managers, supervisors and Human Resources staff regarding the ADA at its Antioch store.

If you have a complaint of employment discrimination or questions regarding laws prohibiting employment discrimination, you may seek assistance from the EEOC's Oakland Local Office at 1301 Clay Street, Suite 1170N, Oakland, CA 94612-5217 or by calling (510) 637-3230. General information about the EEOC and the laws enforced by the EEOC may be obtained on the Internet at [www.eeoc.gov](http://www.eeoc.gov) or by calling 1-800-669-4000 (TDD 1-800-669-6820).

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[Name of posting official]

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**Date Posted:**

This Notice shall remain prominently posted at \_\_\_\_\_ until [month and day], year. This Office Notice shall not be altered, defaced, covered or obstructed by any other material.